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In the Supreme Court of the United States

OCTOBER TERM, 1985

KAREN SISTRUNK, SONYA SISTRUNK
and BETTY MAE RUTLAND

Petitioners

versus

CIRCLE BAR DRILLING COMPANY

Respondent

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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Karen Sistrunk, Sonya Sistrunk and Betty Mae Rutland, petitioners herein, respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit.

QUESTIONS PRESENTED

(1) Whether the parents of seamen can recover nonpecuiniary damages in a cause of action under the General Maritime Law for wrongful death, where the seamen were killed in territorial waters and also were survived by spouses and/or children;

(2) Whether the principle of concurrent beneficiaries expressed in the statutory schedule of the Death on the High Seas Act, 46 U.S.C. §§761 et seq. [DOHSA] is appropriately borrowed for guidance in defining the class of beneficiaries under the General Maritime Law's non-statutory wrongful death remedy; and

(3) Whether nondependency should be a criterion used to disqualify beneficiaries who seek recovery of the nonpecuniary

damages allowable in wrongful death actions under the General Maritime Law.

PARTIES TO THE PROCEEDING

(1) KAREN SISTRUNK, as Administratrix of the Estate of Michael Glenn Sistrunk - Petitioner

(2) SONYA SISTRUNK, as Administratrix of the Estate of David Brian Sistrunk - Petitioner

(3) BILLIE JEAN SISTRUNK, making claim through Karen Sistrunk and Sonya Sistrunk as the surviving mother of Michael Glenn Sistrunk and David Brian Sistrunk.

(4) CREIGHTON SISTRUNK, making claim through Karen Sistrunk and Sonya Sistrunk as the surviving father of Michael Glenn Sistrunk and David Brian Sistrunk.

(5) BETTY MAE RUTLAND, as Administratrix of the Estate of Clifford Rutland - Petitioner

(6) EULA RUTLAND, making claim through Betty Mae Rutland as the surviving mother of Clifford Rutland.

(7) CIRCLE BAR DRILLING COMPANY - Respondent

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OPINIONS BELOW

Attached as Appendix A is the unreported, per curiam opinion of the Fifth Circuit Court of Appeal in Karen Sistrunk, et al. v. Circle Bar Drilling Co., rendered on October 7, 1985. This opinion denied petitioners' request for rehearing and suggestion for rehearing en banc with regard to the Fifth Circuit's initial decision in the matter, officially reported sub nom. Sistrunk v. Circle Bar Drilling Co., 770 F.2d 455 (5th Cir. 1985).

The unreported decision of the United States District Court for the Eastern District of Louisiana - from which the referenced Fifth Circuit appeal was taken - is contained both in the attached excerpt (pp. 20-23) from a transcript of a hearing before the District Court on November 10, 1982 [Appendix B] and in the attached Minute

Entry by the District Court on November 12, 1982 [Appendix B-1].

STATEMENT OF JURISDICTION

The judgment of the Fifth Circuit Court of Appeals which gives rise to this petition was that Court's per curiam opinion rendered on October 7, 1985. A copy is attached hereto as Appendix A. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

On August 8, 1980, the drilling vessel Circle Bar Rig No. 8 capsized in Moss Lake, within the territorial waters of the State of Louisiana. A number of crewmen aboard the vessel were drowned, including Michael Glenn Sistrunk, David Brian Sistrunk and Clifford Rutland. These three decedents all were survived by widows; and the decedents

Michael Sistrunk and Clifford Rutland also were survived by children.

In addition, Michael and David Sistrunk (brothers) were survived by their mother, Billie Jean Sistrunk, and their father, Creighton Sistrunk; and Clifford Rutland was survived by his mother, Eula Rutland.

The widows were legally appointed as representatives of the decedents' estates and, both individually and in this capacity, filed wrongful death actions for damages in the Eastern District of Louisiana against several defendants, including Circle Bar Drilling Company as the owner of the vessel and employer of its crew. The actions invoked the District Court's jurisdiction under both the Jones Act (46 U.S.C. §688) and the General Maritime Law. Both negligence and unseaworthiness were alleged.

Each of the above-named parents made claims for damages on the same bases in these respective proceedings, presenting their claims, as the law requires, through the widow-representative as named plaintiffs.

The parents sought the recovery of nonpecuniary damages for the loss of their sons' society. None of the parents was financially dependent upon decedents at the time of the casualty.

In the course of the proceedings, Circle Bar moved for summary judgment of dismissal as to the parents' claims. It argued that, since widows and children also survived and had brought claims for the decedents' wrongful deaths, the parents had no cause or right of action either under the Jones Act or under the General Maritime Law for the recovery of nonpecuniary damages.

The district judge (the Honorable A.J. McNamara) granted defendant's motion as

to the Jones Act claims, but denied the motion as to the claims arising under the General Maritime Law. Although no formal, written reasons were assigned, he stated from the bench at the hearing on defendant's motion on November 10, 1982 that

> the parents do have a cause of action, even if they have no pecuniary loss and even if the deceased is survived by widow and children... [T]hey do have a cause of action for death under general maritime law, and I am adopting the classes of beneficiaries as set forth in the Death on the High Seas Act.

Appendix B at p. 23. The judge also stated that it was appropriate , "to the extent possible," to achieve the goal of uniformity, and that the borrowing of the referenced Act's schedule of beneficiaries was "a step in that direction." Id. A Minute Entry in the record denying the defendant's motion (as to the General Maritime Law claims) was made on November 12, 1982. See Appendix B-1. Judge

McNamara declined at the time of his ruling to certify the question for interlocutory appeal.

Thereafter, all of the claims of the surviving widows and children were amicably settled. The parent-claimants and Circle Bar entered into an agreement whereby judgment would be entered in favor of claimants and against the defendant Circle Bar, dismissing the claims as to all other defendants, and specifying in each case the amount of damages to be paid by Circle Bar for wrongful death under the General Maritime Law, provided that on completion of the appeal process it was determined that the claimants were entitled to assert this cause of action.

Three separate judgments accordingly were entered on August 27, 1984. In the case brought by Karen Sistrunk as the widow-representative of the decedent Michael Sistrunk, judgment was entered against Circle

Bar and in favor of both Billie Jean and Creighton Sistrunk in the amount of $60,000.00 for each parent, together with legal interest at the rate of 10% from June 5, 1984 until paid in full. In the case of Sonya Sistrunk, the widow-representative of David Brian Sistrunk, judgment likewise was entered against the defendant and in favor of both Billie Jean and Creighton Sistrunk in the same amounts (i.e., $60,000.00 each, plus legal interest). In the case of Betty Mae Rutland, the widow-representative of Clifford Rutland, judgment was entered against the defendant and in favor of Eula Rutland in the amount of $25,000.00, with legal interest at 10% from June 5, 1984 until paid.

Circle Bar appealed from these judgments to the Fifth Circuit Court of Appeals. After briefs were filed and oral argument was heard, that Court rendered an opinion on September 9, 1985, reversing the

district court's judgments and finding that these nondependent parents were not entitled to recover damages under the General Maritime Law for the loss of their sons' society. The appellate decision is officially reported sub nom. Sistrunk v. Circle Bar Drilling Co., 770 F.2d 455 (5th Cir. 1985).

All claimants filed on September 23, 1985 both a Petition for Panel Rehearing and a Suggestion for Rehearing En Banc. In a per curiam opinion rendered on October 7, 1985, and attached hereto as Appendix A, the Fifth Circuit denied both the Petition and the Suggestion.

Claimants now seek this Court's review of the Fifth Circuit's reversal of the District Court's judgments in their favor.

ARGUMENT

I.

Pursuant to Rule 17 of the rules of this Court, review on certiorari is appropriate when, inter alia, the lower court has decided a federal question in a way which conflicts with this Court's applicable decisions. See Rule 17.1(c), Supreme Court Rules. It is respectfully submitted that the Fifth Circuit ruling below is just such a decision, since it's effect is contradictory to the combined authority and mandate of this Court in Moragne v. States Marine Line, Inc., 398 U.S. 375, 90 S.Ct. 1772, 26 L.Ed.2d 339 (1970); Sea-Land Services, Inc. v. Gaudet, 414 U.S. 573, 94 S.Ct. 806, 39 L.Ed.2d 9 (1974) and Mobil Oil Corp. v. Higginbotham, 436 U.S. 618, 98 S.Ct. 2010, 56 L.Ed.2d 581 (1978).

Prior to the Moragne decision, of course, there was no recognized right of recovery for wrongful death under the aegis

of the General Maritime Law. See The Harrisburg v. Rickards, 119 U.S. 199, 7 S.Ct. 140, 30 L.Ed. 358 (1866). But when longshoreman Edward Moragne was killed while working aboard a vessel in Florida's territorial waters and his widow sought damages from the shipowner for unseaworthiness, the Court seized the opportunity to

> reconsider the important question of remedies under federal maritime law for tortious deaths on state territorial waters.

Moragne v. States Marine Lines, Inc., supra, 398 U.S. at 377. Overruling The Harrisburg as "an unjustifiable anomaly," the majority held that an action would lie under the General Maritime Law for wrongful deaths occurring in territorial waters. See id. at 378 & 409.

The Court in Moragne felt that it was not so much establishing a new body of law as it was creating access to existing legal principles. See 398 U.S. at 405.

Questions concerning the remedy, therefore, for the most part were considered answerable by reference to already-known tenets of federal personal injury law. See id. at 406. Yet, determining a class of beneficiaries had no direct counterpart in nonfatal personal injury law.

The United States (amicus curiae in the case) submitted that three federal statutes - the Jones Act, 46 U.S.C. §688; The Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §909 [LHWCA]; and The Death on the High Seas Act, 46 U.S.C. §761 [DOHSA] - were potential references on the subject, but that, of the three, DOHSA's

provisions were appropriate to borrow.[1] Several reasons for this were presented, as the Court took note:

First, DOHSA stands as the one Congressional enactment dealing "specifically and exclusively" with maritime wrongful death actions. Id. at 407. Its remedy is based upon a breach of the substantive duties imposed by the General Maritime Law; and it

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[1] Under the Jones Act, the class of beneficiaries (borrowed from the Federal Employers' Liability Act, 45 U.S.C. §51) allows recovery through decedent's personal representative by: spouses and children, or, if none, dependent "next of kin." 46 U.S.C. §688; 45 U.S.C. §51.

The LHWCA permits recovery by: surviving widows and children, or, if none, dependent grandchildren or siblings or parents. 33 U.S.C. §909 (a)-(c).

DOHSA extends recovery to a "decedent's wife, husband, parent, child, or dependent relative..." 46 U.S.C. §761.

extends that remedy not according to the status of the victim or a particular class of victims but rather on behalf of any "person" fatally injured by the breach. Id. at 407-8.

Conversely, the Jones Act, passed the same year as DOHSA, does not specifically address wrongful death; and, by its own terms, it applies only to a particular type of action, i.e., one brought by a seaman against his employer, based upon negligent standards not grounded in the admiralty but borrowed from the Federal Employers' Liability Act [FELA]. See id. at 407. Hence, the Jones Act concerns itself with both a class of victims and a set of legal responsibilities far different than those involved in the Moragne remedy.

As for the LHWCA, it too is a statute extending by design only to a particular, defined group of victims; and it seeks enforcement not of substantive duties shaped

in the maritime law but specific obligations arising out of the employer-employee relationship. In addition, the LHWCA has nothing whatever to do with damage recovery as a principle of compensation, and deals instead with the type of scheduled and standardized recovery which is common to workmen's compensation schemes. See id. at 407.

It was not necessary to define the eligible beneficiaries of the Moragne cause of action in that case because the widow-claimant would be considered a proper beneficiary under any wrongful death scheme consulted. Hence, the majority elected to defer, and allow this question to develop by "further sifting" through the lower court decisions. Id., 398 U.S. at 408.

At the same time, it is clear from the reading of the opinion that the most appropriate source of guidance and reference

in this regard would be DOHSA. The Court opined that:

> [t]he borrowing of its [DOHSA's] schedule of beneficiaries,... will not only effectuate the expressed congressional preferences in this area but will also promote uniformity by ensuring that the beneficiaries will be the same for identical torts, rather than varying with employment status of the decedent.

Id. at 408.

In numerous lower court decisions following Moragne, and consistent with this Court's directive, DOHSA has been looked to as the primary guidance and reference to determine the eligibility of a claimant-beneficiary under the General Maritime Law wrongful death remedy. See Spiller v. Thomas M. Lowe, Jr. and Associates, Inc., 466 F.2d 903 (2d Cir. 1972); Stissi v. Interstate and Ocean Transport Co., 590 F.Supp. 1043 (E.D.N.Y. 1984); Hamilton v. Canal Barge Co.,

Inc., 395 F.Supp. 978 (E.D. La. 1974); In re: Farrell Lines, Inc., 378 F.Supp. 1354 (S.D. Ga. 1974); Green v. Ross, 338 F.Supp. 365 (S.D. Fla.), aff'd 481 F.2d 102 (5th Cir. 1972), cert. den'd, 414 U.S. 1068, 94 S.Ct. 577, 38 L.Ed.2d 473 (1973); Guilbeau v. Calzada, 240 So.2d 104 (La. App. 1970). But if any doubt possibly could remain as to whether the lower courts should continue to look to DOHSA as primary reference in "sifting" through to a definition of the beneficiary schedule, surely that doubt was resolved by this Court's decision in Higginbotham, supra. There it was reiterated that:

> DOHSA should be the courts' primary guide as they refine the non-statutory death remedy, both because of the interest in uniformity and because Congress' considered judgment has great force in its own right.

436 U.S. at 624 [emphasis added].

In seeking to be recognized as beneficiaries in this case, the parent-claimants therefore have invited reference to DOHSA as a primary guideline. They have argued that the principle of a concurrent, nonpreemptive recovery by parents on the one hand and widows and/or children on the other, is appropriately borrowed from this statute. Surely it is no less true today than it was in the year Moragne was decided that DOHSA stands as the one, single Congressional enactment dealing specifically and exclusively with maritime wrongful death actions, the one statutory source for a remedy based upon the breach of duties imposed by the general maritime law, and the one act of Congress extending the remedy not according to the status of a victim or a particular class of victims, but rather on behalf of the survivors of any "person" fatally injured in a maritime action on the high seas.

The Fifth Circuit's refusal to adopt this principle of concurrent recovery by way of analogy to DOHSA appears grounded on the fact that DOHSA itself would not permit recovery for the nonpecuniary loss suffered by these parents. In the words of the appellate panel, the issue of who recovers and the issue of what is recovered cannot be so "split." See Sistrunk v. Circle Bar Drilling Co., supra, at 459-60.

In point of fact, the issues have been - and must be - split if reference to DOHSA as a guideline for beneficiary eligibility is to continue as meaningful following this Court's decision in Gaudet, supra.

There, only a few years after Moragne, the Court had occasion to provide additional impetus to the "sifting" process of the lower courts by further definition of the substantive elements of the maritime death remedy. In fulfillment of the "humanitarian policy"

underlying Moragne, it held that both pecuniary and nonpecuniary loss (i.e., the loss of society, in addition to the loss of support, etc.) would be compensable in wrongful death actions under the General Maritime Law. See Sea-Land Services, Inc. v. Gaudet, supra, 414 U.S. at 584 & 588.

A resulting question was whether or not this allowance of nonpecuniary damages would create a certain tension in that lower courts might continue to refer to DOHSA to determine the beneficiary eligibility of certain claimants whose (nonpecuniary) damages would not be allowable under that statute.[2]

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[2] Dissenting from the majority opinion in Gaudet, Justice Powell articulated his concern over this tension:

> Presumably, in resolving such questions the lower courts are to continue to rely on the admiralty wrongful death statute. Now they are placed in the interesting position of analogizing to statutes under which the very claim before them would be blocked. 414 U.S. at 602.

It is obvious that the majority in Gaudet was not dissuaded by this concern over "splitting" the issue. Equally obvious is the fact that the inclusion of nonpecuniary elements of recovery in the maritime death action did not prevent this Court more recently in Higginbotham from again encouraging the lower courts to consider DOHSA the "primary guide" for further definition of the remedy. See Mobil Oil Corp. v. Higginbotham, supra, 436 U.S. at 624.

The appellate court's approach is all the more surprising in light of this same Circuit's earlier decision in Skidmore v. Grueninger, 506 F.2d 716 (5th Cir. 1975). There a nondependent adult child of a motorboat passenger killed in territorial waters, which decedent also was survived by a spouse and minor child, was allowed to seek recovery for the loss of her parent's society. The

Fifth Circuit's decision was based on the suggestion in Moragne to look to sources like DOHSA for guidance on the eligibility of a claimant, despite the fact that the loss of society damages in question were not recoverable (under either the Jones Act or DOHSA). See id. at 729 n.11.

The combined result of Moragne, Gaudet and Higginbotham is that the lower courts in a wrongful death action under the General Maritime Law (1) should look primarily to DOHSA as a reference and guide to delineate the class of beneficiaries and (2) must do so without regard to the fact that the Gaudet-approved recovery of nonpecuniary loss would not be recognized under the statute (DOHSA) itself. Yet the Fifth Circuit in this case instead has declined to borrow the principle of concurrent recovery by a parent under DOHSA on the erroneous ground that the

damages recoverable by the parents under the General Maritime Law are not recoverable under DOHSA as well. The illogic of this approach is that DOHSA automatically ceases to be a guide on the subject of beneficiary status in any and all cases where Gaudet- approved damages are sought by the claimant.

II.

The net effect of the Fifth Circuit decision in this case is to disqualify a claimant in a Moragne/Gaudet cause of action because of his or her financial nondependency upon the decedent. The use of dependency as a criterion of eligibility in such cases, however, is not only illogical but inconsistent with both other lower courts' express decisions and this Court's implicit rulings on the subject. See Rule 17.1(a) & (c), Supreme Court Rules.

First, to the extent it did look to DOHSA and disqualified these parents for the lack of financial dependency, the appellate court failed to note that DOHSA itself, though admittedly limiting recovery to pecuniary damages, expressly requires dependency for claimant status only for "relatives" other than parents. See fn.1, supra; see also Hamilton v. Canal Barge Company. Inc., supra. Indeed, both the Fifth Circuit itself and district courts within it repeatedly have held that dependency is not a prerequisite to beneficiary status under that statute (save as to "relatives" other than spouses, children, or parents). See Skidmore v. Grueninger, 506 F.2d 716 (5th Cir. 1975); Complaint of Metcalf, 530 F.Supp. 446, 460 (S.D. Tex. 1981); Thompson v. Offshore Co., 440 F.Supp. 752, 765 (S.D. Texas 1977); Complaint of Sincere Navigation Corp., 1976 A.M.C. 2013, 2016-17 (E.D. La. 1976); Palmer

v. Ribax, Inc., 407 F.Supp. 974, 979 (M.D. Fla. 1976); Hebert v. Otto Candies, Inc., 402 F.Supp. 503, 507 (E.D. La. 1975); Hamilton v. Canal Barge, Inc., supra.

It is especially untoward to consider financial dependency a requirement of beneficiary status following this Court's decision in Gaudet. Almost any other criterion (residency, for example, or the number of years cohabitation between claimant and decedent) would be more apt. As was noted by the district court in Thompson, supra:

> [B]ecause a loss of society is not a financial loss, it would be inappropriate to conclusively presume that only those family members financially dependent on the decedent have suffered such loss.

Thompson v. Offshore Co., supra, at 765.

Considering the General Maritime Law death remedy itself, it is significant that this Court's first post-Moragne

delineation (in Gaudet) was liberalizing and expansive. The defendant vessel owner there had asked that the widow's recovery be confined to only dependency-related, non-pecuniary damages, and this the majority refused to do.

Gaudet, like Moragne before it, happened to deal with the case of a dependent claimant/widow. Otherwise, there is nothing in the reasoning, logic, analysis, or conclusion of the holding to suggest that it modified the Moragne remedy by limiting recovery thereunder to dependent survivors only; and no inference of that limitation logically derives from an opinion generally dedicated to the "humanitarian" guidance of its predecessor.

The practical effect of Gaudet, finally, was to permit recovery for a loss of "society" defined to include the compensation of family members for having been

deprived of a decedent's "love, affection, care, attention, companionship, comfort and protection." 414 U.S. at 585. A theory of recovery founded on loss of this nature hardly presumes or requires the family member to have been financially dependent.

With the recovery of nondependent claimants in a Moragne/Gaudet cause beyond serious dispute, the claimant-parents' recovery herein cannot be burdened or impaired because of their nondependency or claims of solely nonpecuniary loss under Gaudet. The loss of society is compensable as an element of damages in a cause such as this, regardless of whether the claimant seeking to recover was dependent on decedent. Unless the fundamental holdings of Moragne, Gaudet, Skidmore and the above-cited district court jurisprudence are to be ignored or rejected, it but confuses the question at hand to impose financial dependency as a condition of

recovery. The issue is whether these claimants, qua parents, may recover Gaudet-approved damages for nonpecuniary loss, in a maritime wrongful death action based upon unseaworthiness, notwithstanding the survival of, and recovery of separate damages by, decedents' surviving widows and children. By basing its resolution of that issue on considerations of these claimants' financial dependency vel non, the Fifth Circuit has departed from the accepted and approved definition of the General Maritime Law remedy for wrongful death.

III.

The appellate court properly invoked the "twin aims" of "uniformity" and "special solicitude" for victims in seeking to view the present case within the framework of the Moragne/Gaudet remedy. See Sistrunk v. Circle Bar Drilling Co., supra, at 458.

Yet the result of excluding concurrent recovery by parents as well as widows and children in a territorial waters death case is actually to oppose both aims. To this extent, the court below again is in conflict with this Court's trio of seminal decisions in this area - Moragne, Gaudet and Higginbotham - all of which espouse the goals of uniformity and solicitude in giving shape to the nonstatutory remedy. See Rule 17.1(c), Supreme Court Rules.

The appellate court's conclusion that the denial of recovery herein would lend more uniformity to admiralty jurisdiction than would the allowance of recovery, seems based first and foremost on the fact that "[t]he parents in this case could not have recovered for loss of society under other maritime remedies." Sistrunk v. Circle Bar Drilling Co., supra, at 459. The Court also noted that the allowance of recovery would

be "anomalous" in two respects: first, parent-claimants might recover under Moragne for unseaworthiness but not under the Jones Act for negligence; and, secondly, the parent-claimants would recover in territorial waters under Moragne but not on the high seas under DOHSA.

It is respectfully submitted that the lower court again has given improper and erroneous regard to its concern with the fact that DOHSA in and of itself would not afford the recovery of nonpecuniary damages by these particular parent-claimants. As already noted, that statutory reality, fixed as it is by Congress, cannot and should not be determinative in the shaping of a wholly-jurisprudential wrongful death remedy pursuant to the Supreme Court's mandate in Moragne. In the same way, the anomalies of which the Court took note are the creatures of a present juxtaposition of the nonstatutory

death remedy in territorial waters with the statutory death remedy beyond. They are hardly dispositive of the present issue.

This Court in Higginbotham squarely confronted the matter of some non-uniformity in the present scheme, concluding that its desire for uniformity could not "override" the exclusive application of DOHSA on the high seas. See, Mobil Oil Corp. v. Higginbotham, supra, 436 U.S. at 624. But in the same breath, the Court opined that "disparities" would be less likely to develop if the lower courts continued to delineate the Moragne remedy by reference to DOSHA. See id.

Hence, to eliminate "all disparities" in the present state of maritime wrongful death law would be virtually impossible. See Ivy v. Security Barge Lines, Inc., 606 F.2d 525, 534 (5th Cir. 1979) (J. Brown dissenting). But in failing to heed this Court's directives, the Fifth Circuit now has created

an unnecessary disparity in territorial waters between dependent and nondependent claimants.

The matter is far more fruitfully and appropriately considered in a broader context: Long before Moragne, DOHSA and the Jones act coexisted as separate, supplemental remedies on the high seas. One statute's class of beneficiaries complemented the other's in the recovery of damages for combined negligence and unseaworthiness. See Spiller v. Thomas M. Lowe, Jr. and Associates, Inc., supra, at 908 n.7; Hamilton v. Canal Barge Lines, Inc., supra, at 984. By defining Moragne beneficiaries in territorial water death cases according to the principle of nonpreemptive recovery by beneficiaries under DOHSA, the same coexistence of remedies and beneficiaries schedules would coexist within three miles as now exists beyond.

It is further submitted that the Fifth Circuit has misconstrued and misapplied the objective of a special solicitude for seamen in this matter. As the Court itself noted, that solicitude was designed by Moragne to extend to all survivors of seamen killed in territorial waters, and not just dependent survivors. See Sistrunk v. Circle Bar Drilling Co., supra, at 460 n.4. It therefore is both surprising and contradictory for the Court to have concluded that "the special solicitude aim of admiralty has no relevance in this case," because the parents were not dependent on their sons. Id. In point of fact, the longstanding tradition of solicitude for seamen in this country has never at any time been so limited in scope or so narrowly defined as to afford concern only for survivors who happen to be financially dependent on the victim. To suggest that this is, or has been, the case would be to set up an

entirely unwarranted and capricious distinction between the grief of a seaman's dependent family member and the grief of a seamen's nondependent family member. If the solicitude for the deceased seaman is to be genuine, it surely matters not whether his survivors fortuitously were able to support themselves without his financial assistance while he lived.

Finally, the court has misconstrued the principle of solicitude by suggesting that Congress sought to modify it with the enactment of statutes precluding recovery by certain beneficiaries, i.e., DOHSA and the Jones Act. If this Court were bound and limited by the divining of legislative intent when statutory law was enacted in 1920, the rationale for Moragne and the mandated "sifting" through by lower courts to delineate the remedy afforded by that case would hardly exist.

Although overruled in result, one notable jurist's opinion was cited in THE HARRISBURG. Salmon Chase, Chief Justice of the Supreme Court but sitting on circuit at the time, had twenty years earlier allowed wrongful death damages in a case arising out of a collision in the territorial waters of Chesapeake Bay. He found authority in the General Maritime Law, reasoning that it stood apart from and was not governed by the doctrines of the common law, and that

> it better becomes the humane and liberal character of proceedings in admiralty to give than to withhold the remedy...

THE SEA GULL, 21 F.Cas. 909, 910 (No. 12,578) (C.C. MD. 1865) [cited at 119 U.S. 206]. This Court in Moragne harkened back to the same, longstanding principle of

> a special solicitude for the welfare of those men who undertook to venture upon hazardous and unpredictable sea voyages [citations omitted].

398 U.S. at 390. And this court in Gaudet likewise reiterated the age-old view of Justice Chase that, where possible, it was more suitable in admiralty to extend than to withhold a remedy. See 414 U.S. at 583.

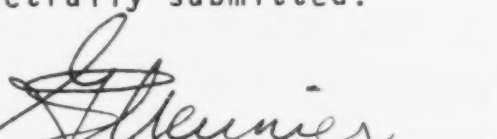
It should be no less fitting in this day of semi-submersible drilling vessels than it was in the era of wooden hulls that the immediate victims of maritime tragedy, such as the parents of lost crewmen (dependent or otherwise), be afforded a just remedy and compensation under the General Maritime Law.

CONCLUSION

This petition calls for authoritative clarification and guidance by this Court, in the continuing tradition of Moragne, Gaudet and Higginbotham. It also requires the resolution of conflicts between the Fifth Circuit decision below and the rationale and bases of numerous lower court decisions as well as the decisions of this Court.

For all the foregoing reasons, it is respectfully submitted that certiorari should be granted.

Respectfully submitted:

BY: 

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ATTORNEYS FOR PETITIONERS

CERTIFICATE OF SERVICE

The undersigned counsel for petitioners has caused three copies of the foregoing Petition for Writ of Certiorari to be served on Mrs. Margot Mazeau and Michael H. Bagot, Jr., Esq., Thirtieth Floor, Texaco Center, 400 Poydras Street, New Orleans, Louisiana, 70130-3195 and on C. Theodore Alpaugh, III, Esq., 1424 Whitney Bank Building, New Orleans, Louisiana, 70130, by placing same in the Federal Express Mail, postage prepaid, this 3rd day of January, 1986.

GERALD E. MEUNIER

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 84-3671

Karen Sistrunk, Individually and As Administratrix of the Estate of Michael Glenn Sistrunk, Plaintiff-Appellee

vs.

Circle Bar Drilling Company, Defendant-Appellant

* *

Sonya Sistrunk, Individually and As Administratrix of the Estate of David Brian Sistrunk, Plaintiff-Appellee

vs.

Circle Bar Drilling Company, Defendant-Appellant

* *

Betty Mae Rutland, Individually and As Independent Executrix and Representative of the Estate of Clifford Rutland, Plaintiff-Appellee

vs.

Circle Bar Drilling Company, Defendant-Appellant

Appeal from the United States District Court for the Eastern District of Louisiana

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

(Opinion September 9, 5 Cir., 1985, 770 F.2d 455)

(October 7, 1985)

Before GOLDBERG, REAVLEY and GARWOOD, Circuit Judges.

PER CURIAM:

(x) The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Federal Rules of Appellate Procedure and Local Rule 35) the Suggestion for Rehearing En Banc is DENIED.

( ) The Petition for Rehearing is DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it, (Federal rules of Appellate Procedure and Local Rule 35) the Suggestion for Rehearing En Banc is also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, rehearing en banc is DENIED.

ENTERED FOR THE COURT:

s/Thomas M. Reavley
United States Circuit Judges

APPENDIX B

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS

* * * * * * * * * * * * *	*	CIVIL ACTION
KAREN SISTRUNK, ET AL	*	
	*	NO. 81-559
	*	Consolidated with
	*	81-474; 81-504;
VERSUS	*	81-512; 81-514;
	*	81-2733
	*	
CIRCLE BAR DRILLING COMPANY	*	SECTION "D"
* * * * * * * * * * * * *	*	

Transcript of PROCEEDINGS had in the above entitled matter held in the Courtroom, 500 Camp Street, New Orleans, Louisiana, on Wednesday, November 10, 1982, before the Honorable A. J. McNamara, District Judge presiding.

APPEARANCES:

KIERR, GAINSBURGH, BENJAMIN, FALLON & LEWIS

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PHELPS, DUNBAR, MARKS, CLAVERIE
& SIMS
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1300 Hibernia Bank Building
New Orleans, LA. 70112

Representing Defendants

REPORTED BY:

THOMAS H. CONRAD, CSR
Official Court Reporter

BY THE COURT:

I have given the matter alot of thought. I have studied your memos and I will issue a written opinion at a later date. But, I am going to deny the motion

for summary judgment for the following reasons: that we started out with THE HARRISBURG in 1886 that said that there was no cause of action under General Maritime Law for death. We then have the Death on the High Seas Act enacted by Congress, and finally, in Moragne, 1970, specifically overruled THE HARRISBURG and found that there was a cause of action for death in the General Maritime Law. Of course, as the Moragne decision indicated, it was going to leave to the shifting of lower Courts, the issues of who were the classes of beneficiaries and what were the elements of damages. Finally, Gaudet was decided, we got some insight into the elements of damages, but nothing into the classes of beneficiaries. The entire purpose, as I read Moragne, was to try to approach

uniformity in the General Maritime Law and to specifically get away from adopting state statutes which completely destroyed uniformity. In spite of the message of Moragne for uniformity in the maritime law, when Higginbotham was decided, we did, to some extent, destroy uniformity, because we allowed for a different measure of recovery on the Death on the High Seas, as opposed to a death in territorial waters, and that Higginbotham limited recovery to pecuniary loss.

The question, it seems to me, now, is: Should this Court hold that because we have had a partial destruction of uniformity by the Higginbotham decision,

that we should revert to looking at, perhaps, state death statutes and throw up our hands and say, the goal of uniformity in Moragne is forever lost and we must leave that goal. And I don't think so. I think that it makes more sense to adopt the classes of beneficiaries in the Death on the High Seas Act, though I can see a potential problem with it. The problem I see, and I don't read the Death on the High Seas Act as you do now, I read it with the modifier only applying to relatives, and not to parents. I read it in the same way that Judge Rubin read it in the Hamilton decision. The problem I see in it, as a practical matter, is that we are adopting a Death on the High Seas Act class of beneficiaries, where, with relatives, you are going to have to show that you are

dependent, in order to be a beneficiary. But, once you becme a beneficiary, under the Gaudet decision, your damages are not going to be limited to pecuniary damages. So, we are going to have a situation where if you are not a dependent relative, you don't have a cause of action. But, once you are a dependent relative, your cause of action is not going to be limited to damages that give rise to the definition of dependency. It's going to also include the loss of society and those other things mentioned in Gaudet. I see that as a problem.

But, on balance, I think that -- and who knows what the people next door will do with this one, if they finally get

it -- we will have gone from Harrisburg to Moragne, to Gaudet, to Higginbotham, and maybe to Sistrunk, which is this case.

But, I am going to rule that the parents do have a cause of action, even if they have no pecuniary loss and even if the deceased is survived by widow and children, that they do have a cause of action for death under the General Maritime Law, and I am adopting the classes of beneficiaries as set forth in the Death on the High Seas Act.

I think that though we have lost some uniformity in Higginbotham, it's not necessary to retreat from that goal completely and I am going, to the extent possible, try to achieve that goal, and I think that adopting the Death on the High Seas Act class of beneficiaries is a step in that direction.

23(a)

So, I am going to have to deny your motion for summary judgment.

oOo

APPENDIX B-1

81-474 "D"(C)(5)

Plaintiffs	Defendants
Circle Bar Drilling Co.	M/V NORMANDE, its engines, tackle, apparel, furniture, etc., in rem
	TWENTY GRAND MARINE SERVICE, INC.
	ABC INSURANCE COMPANY
	TIDEWATER MARINE TOWING, INC.
	M/V LISA CAROL, its engines, tackle, apparel, furniture, etc., in rem
Cons/w 81-504; 81-512, 81-514; 81-559; 81-2733	ANSLUM BOAT RENTAL, INC.

CAUSE

USC UNKNOWN (CITE THE U.S. CIVIL STATUTE UNDER WHICH THE CASE IS FILED AND WRITE A BRIEF STATEMENT OF CAUSE)

CAPSIZING OF PLAINTIFF'S DRILLING BARGE CAUSED BY NEGLIGENCE OF DEFENDANTS' EMPLOYEES

ATTORNEYS

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581-7979

WEDNESDAY, NOVEMBER 10, 1982

a) Motion of Defts., Circle Bar Drilling Co., Anslum Boat Rentals, Inc., Sea-Con Services, Inc., Tidewater Towing Co., Inc., Twenty Grand Marine Service, Inc. and Universal Towing Co., Inc., for Summary Judgment: (And Consolidated Cases) 10:00 AM

O R D E R E D

_____ No Opposition
__X__ Argument
_____ Submitted on Briefs

_____ GRANTED
__X__ DENIED
_____ DENIED AS MOOT
_____ DISMISSED AS MOOT

_____CONTINUED to_____

_____SUBMITTED as of_____

Additional briefs to be filed by_____

Reply briefs to be filed by_____

__X__Reasons given orally by the Court.

__X__Written reasons to be issued.

PHELPS - Mazeau
Bagot, Jr.

DATE OF ENTRY NOV 12, 1982